

SECOND REGULAR SESSION

HOUSE BILL NO. 1112

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PETERS.

4057L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.080, 290.090, 290.110, and 290.120, RSMo, and to enact in lieu thereof four new sections relating to wages, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 290.080, 290.090, 290.110, and 290.120, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 290.650, 290.651, 290.652, and 290.653, to read as follows:

290.650. 1. Sections 290.650 to 290.653 shall be known and may be cited as the "Missouri Wage Payment and Collection Act".

2. As used in sections 290.650 to 290.653, the following terms mean:

(1) "Department", the state department of labor and industrial relations;

(2) "Director", the director of the department;

(3) "Employee", includes any individual permitted to work by an employer in an occupation, but shall not include any individual who:

(a) Has been and will continue to be free from control and direction over the performance of the individual's work, both under the individual's contract of service with the individual's employer and in fact; and

(b) Performs work that is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

(c) Is in an independently established trade, occupation, profession, or business;

(4) "Employer", includes any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 wage payments are made directly or indirectly by the agency or business for work
18 undertaken by employees under hire to a third party under a contract between the
19 business or agency with the third party, or any person or group of persons acting directly
20 or indirectly in the interest of an employer in relation to an employee, for which one or
21 more persons is gainfully employed;

22 (5) "Final compensation", payments to separated employees deemed to be wages,
23 salaries, earned commissions, earned bonuses, and the monetary equivalent of earned
24 vacation and earned holidays, and any other compensation owed the employee by the
25 employer under an employment contract or agreement between the two parties;

26 (6) "Wage supplements", the amount due from the employer to an employee
27 benefit, trust, or fund by any employer that is legally committed through a collective
28 bargaining agreement or otherwise to make contributions to such employee benefit, trust,
29 or fund on the basis of a certain amount per hour, day, week, or other period of time,
30 subject to the wage collection provisions of sections 290.650 to 290.653;

31 (7) "Wages", any compensation owed any employee other than a separated
32 employee by an employer under an employment contract or agreement between the two
33 parties, whether the amount is determined on a time, task, piece, or any other basis of
34 calculation.

35 3. Sections 290.650 to 290.653 shall apply to all employers and employees in this
36 state, including employees of units of local government and school districts, but shall not
37 apply to employees of the state or federal governments.

290.651. 1. Every employer shall, at least semi-monthly, pay every employee all
2 wages earned during the semi-monthly pay period. Wages of executive, administrative,
3 and professional employees, as defined under the federal Fair Labor Standards Act of
4 1938, as amended, may be paid once a month. Commissions may be paid once a month.
5 At the request of a person employed by an employment or labor placement agency that, in
6 the ordinary course of business, makes daily wage payments to employees, the agency shall
7 hold the daily wages and make either weekly or semi-monthly payments. Upon the written
8 request of the employee, the wage shall be paid in a single check representing the wages
9 earned during the period, either weekly or semi-monthly, designated by the employee in
10 accordance with subsection 2 of this section. Employment and labor placement agencies
11 that make daily wage payments shall provide written notification to all daily wage payment
12 employees of the right to request weekly or semi-monthly checks. The employer may
13 provide such notice by conspicuously posting the notice at the location where the wages are
14 received by the daily wage employees.

15 2. (1) All wages earned by any employee during a semi-monthly or bi-weekly pay
16 period shall be paid to such employee not later than thirteen days after the end of the pay
17 period in which such wages were earned. All wages earned by any employee during a
18 weekly pay period shall be paid not later than seven days after the end of the weekly pay
19 period in which the wages were earned. All wages paid on a daily basis shall be paid
20 insofar as possible on the same day as the wages were earned, or not later in any event than
21 twenty-four hours after the day on which the wages were earned. Wages of executive,
22 administrative, and professional employees, as defined under the federal Fair Labor
23 Standards Act of 1938, as amended, may be paid on or before twenty-one calendar days
24 after the period during which they are earned.

25 (2) Employers shall pay to workers on strike or layoff, no later than the next
26 regular payday, all wages earned up to the time of such strike or layoff.

27 (3) Any employee who is absent at the time fixed for payment, or who for any other
28 reason is not paid at that time, shall be paid upon demand at any time within a period of
29 five days after the time fixed for payment, and after the expiration of the five-day period,
30 payment shall be made upon five-days demand. Payment to the absent employee shall be
31 made by mail if the employee so requests in writing.

32 (4) All wages and final compensation shall be paid in lawful money of the United
33 States, by check, redeemable upon demand and without discount at a bank or other
34 financial institution readily available to the employee, or by deposit of funds in an account
35 in a bank or other financial institution designated by the employee. No employer shall
36 designate a particular financial institution, bank, savings bank, savings and loan, or
37 currency exchange for the exclusive payment or deposit of a check for wages. No financial
38 institution, bank, savings bank, savings and loan, or currency exchange shall refuse to
39 honor a check for wages that exclusively designates, in violation of this subsection, a
40 particular bank, savings bank, savings and loan, or currency exchange as the exclusive
41 place of payment or deposit except to the extent the bank, savings bank, savings and loan,
42 or currency exchange is otherwise excused from honoring the check under section
43 400.3-111 because the bank, savings bank, savings and loan, or currency exchange is not
44 the drawee or the maker of the check.

45 (5) This subsection shall not apply if there exists a valid collective bargaining
46 agreement that provides for a different date or for different arrangements for the payment
47 of wages.

48 3. (1) Every employer shall pay the final compensation of separated employees in
49 full at the time of separation, if possible, but in no case later than the next regularly
50 scheduled payday for such employee. Where such employee requests in writing that the

51 employee's final compensation be paid by check and mailed to the employee, the employer
52 shall comply with the request.

53 (2) Unless otherwise provided in a collective bargaining agreement, whenever a
54 contract of employment or employment policy provides for paid vacations, and an
55 employee resigns or is terminated without having taken all vacation time earned in
56 accordance with such contract of employment or employment policy, the monetary
57 equivalent of all earned vacation shall be paid to the employee as part of the employee's
58 final compensation at the employee's final rate of pay, and no employment contract or
59 employment policy shall provide for forfeiture of earned vacation time upon separation.

60 4. Where an employer is legally committed through a collective bargaining
61 agreement or otherwise to make contributions to an employee benefit, trust, or fund on the
62 basis of a certain amount per hour, day, week, or other period of time, the amount due
63 from the employer to such employee benefit, trust, or fund shall be treated as wages,
64 subject to the wage payment provisions of sections 290.650 to 290.653.

65 5. (1) Except as provided in this subsection, deductions by employers from wages
66 or final compensation are prohibited unless such deductions are:

67 (a) Required by law;

68 (b) To the benefit of the employee;

69 (c) In response to a valid wage assignment or wage deduction order; or

70 (d) Made with the express written consent of the employee, given freely at the time
71 the deduction is made.

72 (2) Where the legitimacy of any deduction from wages is in dispute, the amount in
73 question may be withheld if the employer notifies the department on the date the payment
74 is due in writing of the amount that is being withheld and stating the reasons for which the
75 payment is withheld. Upon such notification, the department shall conduct an
76 investigation and render a judgment as promptly as possible, and shall complete such
77 investigation within thirty days of receipt of the notification by the employer that wages
78 have been withheld. The employer shall pay the wages due upon order of the department
79 within fifteen calendar days of issuance of a judgment on the dispute.

80 (3) The department shall establish rules to protect the interests of both parties in
81 cases of disputed deductions from wages. Such rules shall include reasonable limitations
82 on the amount of deductions beyond those required by law that may be made during any
83 pay period by any employer.

84 (4) In case of a dispute over wages, the employer shall pay, without condition and
85 within the time set by sections 290.650 to 290.653, all wages or parts thereof conceded by
86 the employer to be due, leaving to the employee all remedies to which the employee may

87 otherwise be entitled as to any balance claimed. The acceptance by an employee of a
88 disputed paycheck shall not constitute a release as to the balance of the employee's claim,
89 and any release or restrictive endorsement required by an employer as a condition to
90 payment shall be a violation of sections 290.650 to 290.653 and shall be void.

290.652. 1. Employers shall notify employees at the time of hiring of the rate of pay
2 and of the time and place of payment. Whenever possible, such notification shall be in
3 writing and shall be acknowledged by both parties. Employers shall also notify employees
4 of any changes in such arrangements before the time of change. Employers shall keep
5 records of names and addresses of all employees and of wages paid each payday, and shall
6 furnish each employee with an itemized statement of deductions made from the employee's
7 wages for each pay period. Every employer shall post and keep posted at each regular
8 place of business in a position easily accessible to all employees one or more notices
9 indicating the regular paydays and the place and time for payment of the employees, and
10 on forms supplied from time to time by the department containing a copy or summary of
11 the provisions of sections 290.650 to 290.653.

12 2. In addition to an individual who is deemed to be an employer under sections
13 290.650 to 290.653, any officers of a corporation or agents of an employer who knowingly
14 permit such employer to violate the provisions of sections 290.650 to 290.653 shall be
15 deemed to be the employers of the employees of the corporation.

290.653. 1. The director or the director's designee may assist any employee and act
2 on the employee's behalf in the collection of wages or final compensation due the employee.
3 The director or the director's designee may also assist a class of employees and act in their
4 behalf in a class action or with respect to all employees of the class with respect to whom
5 payments are due.

6 2. The department may enter into agreements with other states to collect unpaid
7 wages from out-of-state employers and to perform reciprocal services for such states in this
8 state.

9 3. An employee may file a complaint with the department alleging violations of
10 sections 290.650 to 290.653 by submitting a signed, completed wage claim application on
11 a form provided by the department and by submitting copies of all supporting
12 documentation. Complaints shall be filed within one year after the wages, final
13 compensation, or wage supplements were due. Applications shall be reviewed by the
14 department to determine whether there is cause for investigation.

15 4. The department shall have the following powers:

16 (1) To investigate and attempt equitably to adjust controversies between employees
17 and employers in respect of wage claims arising under sections 290.650 to 290.653, and for

18 such purposes the director or the director's designee may administer oaths, subpoena and
19 examine witnesses, issue subpoenas duces tecum requiring the production of such books,
20 papers, records, and documents as may be evidence of any matter under inquiry, and
21 examine and inspect such evidence as it may relate to the question in dispute. Service of
22 such subpoenas may be made by any sheriff or any person. Any court in this state, upon
23 the application of the department, may compel the attendance of witnesses, the production
24 of books and papers, and the giving of testimony before the department by attachment for
25 contempt or in any other way as the production of evidence may be compelled before such
26 court;

27 (2) To take assignments of wage claims in the name of the director and prosecute
28 actions for the collection of wages for persons financially unable to prosecute such claims
29 when in the judgment of the department such claims are valid and enforceable in the
30 courts. No court costs or any fees for necessary process and proceedings shall be payable
31 in advance by the department for prosecuting such actions. In the event there is a
32 judgment rendered against the defendant, the court shall assess the costs of such
33 proceeding as part of such judgment. Upon collection of such judgments the department
34 shall pay from the proceeds of such judgment such costs to such person who is by law
35 entitled to such costs. The department may join in a single proceeding any number of wage
36 claims against the same employer, but the court shall have discretionary power to order
37 a severance or separate trial for hearings;

38 (3) To make a complaint in any court of competent jurisdiction of violations of
39 sections 290.650 to 290.653;

40 (4) Subject to appropriation, the department may establish an administrative
41 procedure to adjudicate claims or specific categories of claims filed with the department
42 for three thousand dollars or less per individual employee, exclusive of penalties, costs, and
43 fines, including instances where an employer fails to timely respond to a notice of claim
44 issued by the department, and to issue final and binding administrative decisions on such
45 claims.

46 5. (1) Nothing in subsection 4 of this section shall be construed to prevent any
47 employee from making complaint or prosecuting the employee's own claim for wages. Any
48 employee aggrieved by a violation of sections 290.650 to 290.653 or any rule adopted under
49 sections 290.650 to 290.653 may file suit in circuit court in the county where the alleged
50 violation occurred, or where any employee who is party to the action resides, without
51 regard to exhaustion of any alternative administrative remedies provided in sections
52 290.650 to 290.653. Actions may be brought by one or more employees for and on behalf
53 of themselves and other employees similarly situated.

54 (2) Nothing in subsection 4 of this section shall be construed to limit the authority
55 of the prosecuting attorney of any county to prosecute actions for violation of sections
56 290.650 to 290.653 or to enforce the provisions thereof independently and without specific
57 direction of the department.

58 6. The department shall inquire diligently for any violations of sections 290.650 to
59 290.653, and shall institute the actions for penalties provided in this section, and shall
60 enforce generally the provisions of sections 290.650 to 290.653.

61 7. (1) Any employee not timely paid wages, final compensation, or wage
62 supplements by the employee's employer as required by sections 290.650 to 290.653 shall
63 be entitled to recover through a claim filed with the department or in a civil action, but not
64 both, the amount of any such under payments and damages of two percent of the amount
65 of any such under payments for each month following the date of payment during which
66 such under payments remain unpaid. In a civil action, such employee shall also recover
67 costs and all reasonable attorney's fees.

68 (2) In addition to the other remedies provided in this section, any employer or any
69 agent of an employer who, being able to pay wages, final compensation, or wage
70 supplements, and being under a duty to pay, willfully refuses to pay as provided in sections
71 290.650 to 290.653, or falsely denies the amount or validity thereof or that the amount is
72 due, with intent to secure for the employer or other person any under payment of such
73 indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the person
74 to whom such indebtedness is due is guilty, upon conviction, of:

75 (a) For unpaid wages, final compensation, or wage supplements in the amount of
76 five thousand dollars or less, a class B misdemeanor; or

77 (b) For unpaid wages, final compensation, or wage supplements in the amount of
78 more than five thousand dollars, a class A misdemeanor.

79 (3) Each day during which any violation of sections 290.650 to 290.653 continues
80 shall constitute a separate and distinct offense.

81 (4) Any employer or any agent of an employer who violates this subsection a
82 subsequent time within two years of a prior criminal conviction under this subsection is
83 guilty, upon conviction, of a class D felony.

84 (5) (a) Any employer who has been demanded or ordered by the department or
85 ordered by the court to pay wages, final compensation, or wage supplements due an
86 employee shall be required to pay a nonwaivable administrative fee of two hundred fifty
87 dollars to the department. Any employer who has been so demanded or ordered by the
88 department or ordered by a court to pay such wages, final compensation, or wage
89 supplements and who fails to seek timely review of such a demand or order as provided for

under sections 290.650 to 290.653 and who fails to comply within fifteen calendar days after such demand or within thirty-five days of an administrative or court order is entered shall also be liable to pay a penalty to the department twenty percent of the amount found owing and a penalty to the employee of one percent per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under sections 290.650 to 290.653, except those owing to the affected employee, shall be deposited into the wage theft enforcement trust fund created in this subdivision.

(b) There is hereby created in the state treasury the "Wage Theft Enforcement Trust Fund", which shall consist of money collected under sections 290.650 to 290.653. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely for the enforcement of sections 290.650 to 290.653. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

(6) Penalties and fees under sections 290.650 to 290.653 may be assessed by the department and recovered in a civil action brought by the department in any circuit court or in any administrative adjudicative proceeding under sections 290.650 to 290.653. In any such civil action or administrative adjudicative proceeding under sections 290.650 to 290.653, the department shall be represented by the attorney general.

(7) Any employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to the employee's employer, to the director or the director's designee, in a public hearing, or to a community organization that the employee has not been paid in accordance with the provisions of sections 290.650 to 290.653, or because that employee has caused to be instituted any proceeding under or related to sections 290.650 to 290.653, or because that employee has testified or is about to testify in an investigation or proceeding under sections 290.650 to 290.653 is guilty, upon conviction, of a class C misdemeanor. An employee who has been unlawfully retaliated against shall be entitled to recover through a claim filed with the department or in a civil action, but not both, all legal and equitable relief as may be appropriate. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

125 **8. The director or the director's designee shall administer and enforce the**
126 **provisions of sections 290.650 to 290.653. The department shall promulgate rules to**
127 **implement the provisions of sections 290.650 to 290.653. Any rule or portion of a rule, as**
128 **that term is defined in section 536.010, that is created under the authority delegated in this**
129 **section shall become effective only if it complies with and is subject to all of the provisions**
130 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
131 **nonseverable and if any of the powers vested with the general assembly under chapter 536**
132 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
133 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
134 **adopted after August 28, 2014, shall be invalid and void.**

2 [290.080. All corporations doing business in this state, and all persons
3 operating railroads or railroad shops in this state, shall pay the wages and salaries
4 of their employees as often as semimonthly, within sixteen days of the close of
5 each payroll period; provided, however, that executive, administrative and
6 professional employees, and sales people and other employees compensated in
7 whole or in part on a commission basis, at the option of such employers, may be
8 paid their salaries or commissions monthly. Such corporations and persons either
9 as a part of the check, draft or other voucher paying the wages or separately, shall
10 furnish the employee at least once a month a statement showing the total amount
11 of deductions for the period. Any corporation or person violating this section
12 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be
13 fined in any sum not less than fifty dollars, nor more than five hundred dollars,
14 for each offense.]

2 [290.090. The employees of the operators of all manufactories, including
3 plate glass manufactories, operated within this state shall be regularly paid in full
4 of all wages due them at least once in every fifteen days, in lawful money, and at
5 no pay day shall there be withheld from the earnings of any employee any sum
6 to exceed the amount due him for his labor for five days next preceding any such
7 pay day. Any such operator who fails and refuses to pay his employees, their
8 agents, assigns or anyone duly authorized to collect such wages, as in this section
9 provided, shall become immediately liable to any such employee, his agents or
10 assigns for an amount double the sum due such employee at the time of such
11 failure to pay the wages due, to be recovered by civil action in any court of
12 competent jurisdiction within this state, and no employee, within the meaning of
13 this section, shall be deemed to have waived any right accruing to him under this
14 section by any contract he may make contrary to the provisions hereof.]

2 [290.110. Whenever any person, firm or corporation doing business in
3 this state shall discharge, with or without cause, or refuse to further employ any
servant or employee thereof, the unpaid wages of the servant or employee then

4 earned at the contract rate, without abatement or deduction, shall be and become
5 due and payable on the day of the discharge or refusal to longer employ and the
6 servant or employee may request in writing of his foreman or the keeper of his
7 time to have the money due him, or a valid check therefor, sent to any station or
8 office where a regular agent is kept; and if the money or a valid check therefor,
9 does not reach the station or office within seven days from the date it is so
10 requested, then as a penalty for such nonpayment the wages of the servant or
11 employee shall continue from the date of the discharge or refusal to further
12 employ, at the same rate until paid; provided, such wages shall not continue more
13 than sixty days. This section shall not apply in the case of an employee whose
14 remuneration for work is based primarily on commissions and whose duties
15 include collection of accounts, care of a stock or merchandise and similar
16 activities and where an audit is necessary or customary in order to determine the
17 net amount due.]
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2 [290.120. No such servant or employee who secretes or absents himself
3 to avoid payment to him, or refuses to receive the same when fully tendered, shall
4 be entitled to any benefit under sections 290.110 and 290.120 for such time as he
5 so avoids payment.]

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